

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:01CR259
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM AND ORDER
)	
ELIAS ZAVALA,)	
)	
Defendant.)	

This matter is before the Court on the Defendant's Notice of Appeal, ECF No. 202, and Motion for Leave to Appeal In Forma Pauperis, ECF No. 203.

Although the Defendant seeks to appeal from the Court's Memorandum and Order, ECF No. 197, denying his Motion, ECF No. 196, which the Clerk docketed as a Motion to Vacate under 28 U.S.C. § 2255, the Defendant did not file any motion for certificate of appealability pursuant to 28 U.S.C. § 2253(c), likely because he repeatedly asserted that his Motion, ECF No. 196, was *not* presented under 28 U.S.C. § 2255, but was a "Criminal Fraud Alert." See ECF No. 196, Page ID 742.

The Court accepted the Defendant's characterization of his Motion in the Court's Memorandum and Order, ECF No. 197, and denied the Motion simply as one lacking any merit or basis for relief. If the Court *were* to construe the Defendant's Motion, ECF No. 196, as a motion presented under 28 U.S.C. § 2255, the Court would deny a certificate of appealability, because the Defendant did not make any substantial showing of a denial of a constitutional right. Because the Court has accepted the Defendant's position that his Motion, ECF No. 196, was not one presented under 28 U.S.C. § 2255, the Court will deny the Motion for Leave to Appeal In Forma Pauperis, ECF No. 203, pursuant to 28 U.S.C. § 1915 (3), certifying that the Court concludes the appeal is not taken in good faith.

IT IS ORDERED:

1. The Defendant's Motion for Leave to Proceed In forma Pauperis, ECF No. 203, is denied, and
2. The Clerk is directed to mail a copy of this Order to the Defendant at his last known address.

DATED this 2nd day of March, 2017.

BY THE COURT

s/Laurie Smith Camp
Chief United States District Judge